UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No. 4:06CR506 HEA
v.	)	
	)	
SHAWN BROWN,	)	
	)	
Defendant.	)	

GOVERNMENT'S SENTENCING MEMORANDUM

COMES NOW the United States of America, by and through Acting United States Attorney Michael W. Reap and Assistant United States Attorney Thomas C. Albus and respectfully submits the following sentencing memorandum.[1]

I. Defendant's Recidivism Argument is Unfounded

In his sentencing memorandum, the government anticipates the defendant will argue that even Criminal History Category I of the United States Sentencing Guidelines (the "guidelines") overstates the seriousness of his criminal history, especially in terms of his likelihood of re-offending. Defendant specifically will cite his age, marital status and education, as those factors are discussed in a recent United States Sentencing Commission study (the "study") on recidivism, in support of this argument.

This argument that the study supports downward variances from the presumptively

[1]This memorandum anticipates a number of arguments the undersigned believes counsel for the defendant will make based on discussions and past practice. Rather than wait for such a filing, the government is filing its memorandum at this time to ensure the Court has adequate time to review the issues raised. Once the defendant files his memorandum, the government reserves its right to reply to issues not addressed herein by means of an additional filing or at sentencing.

reasonable criminal history category has been rejected by the Eighth Circuit and other courts for a number of reasons. First, as the Eighth Circuit has recently observed, the guidelines "have already accounted for the likelihood of recidivism through the criminal history computation." United States v. McDonald, 461 F.3d 948, 953 (8th Cir. 2006) (citing United States v. Gayle, 389 F.3d 406, 409 (2d Cir. 2004)). Second, the very study the defendant will cite ultimately concluded that the guidelines' criminal history points and categories accurately predicted the likelihood of recidivism. McDonald 461 F.3d at 954 (citing the study). Otherwise, the study could have and would have recommended the establishment of additional categories. It is for these reasons that McDonald and other rulings of the Eighth Circuit caution against substantial variances based upon characteristics of an individual defendant "for which the guidelines calculation already accounts." Id. (citing United States v. Myers, 439 F.3d 415, 418 (8th Cir. 2006)).

II. Defendant's Community Service Should not Weigh Heavily in his Favor in Light of the Nature of this Crime

The government also anticipates the defendant will point out his community service as another basis for a variance from the applicable guidelines range.

Although it is true that extraordinary community service can be a basis for a departure or variance, those cases the government has been able to find speak unfavorably about using "garden variety" community service activities as a basis for a departure or variance. "Charitable or volunteer activities conceivably can serve as the basis for a [pre-Booker] downward departure but only where those activities are truly exceptional in nature." United States v. Haversat, 22 F.3d 790, 795-96 (8th Cir. 1994) (citing United States v. Neil, 903 F.2d 564, 565-66 (8th Cir. 1990)); see also United States v. Morken, 133 F.3d 628, 630 (8th Cir. 1998) (community service, although commendable, is to be expected of prominent members of community and is not a proper basis for pre-Booker downward departure); United States v. Repking, 467 F.3d 1091, 1095 (7th Cir. 2006) (charitable works not sufficient to justify downward variance, especially those consistent with a defendant's professional development); United States v. Cooper, 394 F.3d 172, 176-77 (3d Cir. 2005) ("it is usual and ordinary" in the prosecution of high-profile defendant that they will be involved in "communities charities, civic organizations, and church efforts"); United States v. Serrata, 425 F.3d 886, 915 (10th Cir. 2005).

In the present case, it is particularly inappropriate to for a Court to vary downward based upon community service when the crime itself involves the breach of the public trust. Perhaps a defendant convicted of tax evasion could argue exceptional community service tends to negate a serious offense against the government; but, in the present case, the defendant broke the trust of the very community he claims to have served. His conduct threw the government of the City of St. Peters into confusion and has required the Board of Alderman to appoint an acting mayor and convene a special election. Additionally, his conduct has cast the government on which he served and the community he represented in an unfavorable light. On balance, the defendant's crime has visited more harm on the City of St. Peters than the defendant's service may have helped it.

III. The Sentencing Range Suggested by the Guidelines is not Unduly Harsh in Light of Sentences Handed Down in Other Corruption Cases Especially in Light of the Facts of the Present Case

The government further anticipates that the defendant will also suggest that, because other more serious instances of public corruption have been punished relatively leniently, a downward variance is warranted to avoid any unwarranted disparity between his sentence and those more culpable defendants.

A. Harsher Sentences than that Called for by the Guidelines have been Handed Down Across the Country for a long period of time

Both before and after Booker, federal and state courts have handed down sentences as long or longer than that called for by the high end of the sentencing range the defendant is facing in cases involving corrupt public officials. United States v. Davis, 967 F.2d 516 (11th Cir. 1992) (78-month sentence of a state legislator convicted of accepting approximately $20,000.00 in bribes); United States v. Biaggi, 853 F.2d 89 (2nd Cir. 1988) (30-month sentence for congressman convicted of accepting free vacations and obstruction); United States v. Jenrette, 744 F.2d 817 (D.C. Cir. 1984) (24-month sentence for congressman who accepted $50,000.00 bribe in Abscam investigation); United States v. Brown, 540 F.2d 364 (8th Cir. 1976) (36-month sentence to building commissioner who rigged demolition bids in exchange for a free apartment); United States v. Hyde, 448 F.2d 815 (5th Cir. 1971) (96-month sentence for state attorney general convicted of extorting payments of up to $75,000 from finance companies); United States v. Meerovich, (D.D.C. June 24, 2003) (24-month sentence for state department official convicted of brokering visas for $50,000 in pay offs); United States v. Prasad, (E.D. Cal. February 11, 2005) (57-month sentence for "visa broker" who bribed state department officials to issue improper visas; other brokers received lesser sentences and the corrupt state department officials received harsher sentences); United States v. Paulus, (E.D. Wis. August 2, 2004) (58-month sentence for district attorney who accepted more than $48,000 in bribes to compromise 22 criminal and traffic cases).[2]

[2]These cases are either reported in the Federal Reporter or are reported in the annual report of the U.S. Department of Justice, Public Integrity Section's annual reports and are

Recent cases handled in this district are also in line with the sentencing range established in the present case. For example, in United States v. Robert Young, 4:02CR19 (E.D. Mo. June 6, 2002), the defendant was a member of the St. Louis County Council and accepted relatively small bribes in connection with the taxi cab business at the St. Louis airport. Even though Young received a reduction for his substantial assistance, he was still sentenced to 12 months and one day in prison. Another recent case involving a corrupt St. Louis City plumbing inspector, United States v. Albert Carothers, (E.D. Mo. January 20, 2006), lead to a 30-month sentence. Carothers was convicted of taking a number of small bribes over several months in connection with his duties as a municipal plumbing inspector. Finally and most recently, in United States v. Joseph King, (E.D. Mo. January 12, 2007), the city manager of Berkley, Missouri received a 46-month sentence for accepting kickbacks in connection with the awarding of municipal insurance contracts.

B. The Facts of the Present Case Suggest, if Anything, that Defendant's Total Offense Level Understates the Seriousness of the Crime

Another point to consider is, in light of the specific facts of this case, the defendant is fortunate that his total offense level is as low as it is.

In the course of soliciting the bribe that is the subject of this case, the defendant indicated he wanted as much money as the representative of Redflex Systems could produce. See Partial Transcript of June 15, 2006 telephone call filed herewith as Exhibit 1.[3] Ultimately, the Redflex

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available at http://www.usdoj.gov/criminal/pin.html. Presumably, most if not all of the various government officials convicted in these cases (in the era of the guidelines) had a criminal history category of I.

[3]As the defendant may point out in his sentencing memorandum, charge bargaining can lead to sentence disparities between defendant's convicted of similar conduct. Of course, the

representatives and the investigators decided to send the defendant a check for $2,750.00. They could have just as easily, for example, sent two checks for $2,750.00 which would have increased the defendant's total offense level by four points and nearly doubled his presumptive guidelines range. See U.S.S.G. §§ 2C1.1(b)(1) (two-point enhancement for multiple bribes); 2C1.1(b)(2) and 2B1.1(b)(1)(B) (two-point enhancement for bribes in excess of $5,000.00).

Additionally, the defendant made false statements both to investigators and to the media to the effect that the charges were all a misunderstanding and the payment was merely a campaign contribution. Although these statements do not legally constitute obstruction or negate acceptance of responsibility, they neither support a downward variance from the presumptive range.

Finally, although the bribe the defendant ultimately received is modest, it is important to remember that the contract that was the subject of the bribe was worth hundreds of thousands of dollars to the City of St. Peters. If the guidelines were driven by this larger amount, the defendant's presumptive guidelines range would call for a sentence many times longer than eighteen to twenty-four months.

IV. Conclusion

The government disagrees with the defendant's suggestion that the applicable guidelines range is too severe when the statutory sentencing factors are considered.

The defendant has admittedly committed a serious breach of the public trust for his own

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relative strength of evidence against a particular defendant dictates the extent to which charge bargaining takes place. In the present case, the defendant was caught soliciting a bribe on tape. In light of this strong evidence, the defendant had little negotiating strength through which to demand a lesser charge.

personal enrichment. In doing so, he indicated he would take as large a bribe as the victim company could produce. Compounding the problem, having been charged, he falsely tried to explain the bribe was a campaign contribution. If anything, the guidelines, which focus on the size of the bribe rather than, for example, the size of the contract or the number of constituents the defendant let down, understate the seriousness of the defendant's offense.

The legal attacks on the presumptive guideline range suggested by the defendant are either already considered by the range or are not well-founded in law.

For all these reasons, the government respectfully requests the defendant be sentences to a term of incarceration of not less than eighteen months and not less than twenty-four months.

Respectfully submitted,

Michael W. Reap
Acting United States Attorney

/s/ Thomas C. Albus
Thomas C. Albus, #96250
Assistant United States Attorney

A true and accurate copy of the foregoing was served electronically upon N. Scott Rosenblum, Esq. and Adam Fein, Esq., counsel for the defendant this 25th day of January, 2007.

/s/ Thomas C. Albus